

REMEDIATION AND REDEVELOPMENT (RR) NEWS FROM WISCONSIN DNR

COMM 46 COMPLIANCE WITH CHAPTER 160

A recent letter written by JoAnne Kloppenburg at the Department of Justice (DOJ) at the request of State Senator Judith Robson has raised questions about the implementation of Comm 46, the emergency PECFA rule adopted by both DNR and Commerce. Senator Robson had asked DOJ to review emergency rule Comm 46 to determine if it was consistent with chapter 160, Wis. Stats. In her letter, JoAnne Kloppenburg notes that the rule is not clear and that its compliance with chapter 160, the groundwater statute, may depend on how the rule is implemented at any particular site. Specifically, she said that the term "developable groundwater", as used in Comm 46, is a kind of aquifer classification not authorized by the groundwater statute. She suggests that the rule is flawed for not requiring responsible parties to show that contamination within 300 times the enforcement standard in non-developable groundwater is decreasing, and that applicable groundwater standards will eventually be met.

It is DNR's position that NR 726 still applies to petroleum-contamination cases (as well as other kinds of hazardous substance discharges) and that Comm 46 must be interpreted and applied in compliance with NR 726. For clay sites, as defined in the DNR-Commerce MOU, if the risk criteria in s. Comm 46.05 are satisfied, Comm 46 creates a presumption that natural attenuation will restore the groundwater at a site to NR 140 groundwater quality standards within a reasonable period of time, so that long-term monitoring to demonstrate that natural attenuation is working at the site will not be required. A very long time is reasonable for sites with low permeability soils where there are no environmental factors of concern.

The Legislature's Joint Committee for Review of Administrative Rules has directed an attorney from DNR to meet with JoAnne Kloppenburg and an attorney from the Department of Commerce to discuss the issue of whether or not Comm 46 is consistent with chapter 160, Wis. Stats. Until the emergency rule expires or the Legislature takes action to suspend the rule, the provisions of Comm 46 should be implemented on a site-specific basis. DNR is developing an implementation guide for the emergency rule. In the background statement for the final rule language, the Departments will clarify how the final Comm 46 rule will comply with the groundwater law.

NEW BROWNFIELDS PUBLICATIONS AVAILABLE

The following four new factsheets are now available from the RR program and will be available on the RR program web site - <http://www.dnr.state.wi.us/org/aw/rr/index.htm>

Printed copies of the factsheets may be obtained by calling 608-264-6020, or 1-800-367-6076 for in-state long distance calls.

- 1999-2001 Wisconsin State Budget: Statutory Changes Related to Brownfields in the Governor's Budget, Publication RR-623. A summary of all the proposed statutory changes related to brownfields in the Governor's 1999-2001 budget bill, prepared by the Department of Natural Resources.
- Fact Sheet 2: Voluntary Party Remediation and Exemption from Liability, Publication RR-506. A description of the voluntary party

exemption process intended for parties who voluntarily investigate and clean up contaminated property (brownfields).

- Fact Sheet 11: General Liability Clarification Letters, Publication RR-619. A description of general liability clarification letters and how to request one from the DNR. These letters may be useful for people who want to buy, sell, or get a loan on a piece of contaminated property.

- Fact Sheet 12: Lease Letters: Clarifying Environmental Liability when Leasing Property, Publication RR-620. A publication to help potential tenants/owners of contaminated properties understand how lessees may avoid liability for contaminated properties that they rent. The fact sheet describes steps they must take and site-specific conditions they must meet to acquire a letter.

ATTENTION LOCAL GOVERNMENTS!

You are invited to attend a special training program on brownfield redevelopment. The U.S. Department of Housing and Urban Development (HUD), the U.S. Environmental Protection Agency, and the University of Illinois' Great Lakes Center for Occupational & Environmental Safety & Health are sponsoring a conference May 24th through May 28th titled "Nuts and Bolts of Brownfield Redevelopment for Local Governments". The agenda includes a variety of interesting presenters from local, state, and federal governments as well as developers and environmental consultants who work on brownfields issues. This training will be held in downtown Chicago and there is a \$500 registration fee for the training. To register or for more information please contact Eugene Goldfarb with HUD at (312) 353-1696, extension 2727.

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